

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION  
9174 Sky Park Court, Suite 100  
San Diego, California 92123

MINUTES OF MEETING  
December 8, 2004

Chairman Minan called the regular meeting of the California Regional Water Quality Control Board, San Diego Region, to order at 9:00 a.m. at the Regional Water Quality Control Board, 9174 Sky Park Court, San Diego, California.

Chairman Minan introduced and welcomed the six new members to the Board.

**Item 1** – Roll Call: **Board Members Present:** Chairman John Minan, Richard Wright, Janet Keller, Eric Anderson, Alan Barrett, Daniel Johnson, Jennifer Kraus, Linda LeGerrette and Susan Ritschel.

**Staff Present:** Arthur Coe, Michael McCann, David Barker, Lori Costa, Mark Alpert, John Phillips, Pete Michael, Craig Carlisle, Brian Kelley, Dave Gibson, Stacey Baczkowski, Bob Morris, Julie Chan, John Odermatt, Alan Monji, Ben Tobler, Christina Arias, Tom Alo, Jimmy Smith, Phil Hammer, Lesley Dobalian, Jeremy Haas, Victor Vasquez, Megan Quigley, Tony Felix, Shane Landry, Lisa Honma, Mike Porter, Chris Means, DiAnne Broussard, Equilla Harris, Eric Becker, Kristin Schwall and Ben Neill.

**Others Present on behalf of the Regional Board:** State Water Resources Control Board – John Richards. **Sylvia Becker Reporting:** Nealy Kendrick. **Public Attendance:** Chuck Apgar, Russ Popma – Neighborhood Alliance; Mark Thompson – TRS Consultants; Tom Rosales – So. Orange County Wastewater Authority; Guy Witney – California Avocado Commission; Brent Rising – D.S. Water of N.A.; Jesse Westrup – Hines Horticulture; Bruce Reznik – San Diego BayKeeper; Julie Byford – SW San Diego; Bill Kraus – Ceran-Kote; John Lemmo – Foley & Lardner; Theresa Trost – US Navy; JoAnn Weber, Paul Davy – County of San Diego; Kristen Hukari – San Diego Co. Farm Bureau; Richard Watson – RWA; Alice Benson – Ramona MWD; Laura Larsen – RBF Consulting; Terry Rodgers – Union-Tribune; Patti Krebs – Industrial Environmental Association; Norman Traner – ECO Farms; Steve Malloy – Irvine Ranch Water District; Barbara Bradley – Advanced Onsite Systems; Dennis Dickerson – McGuire Environmental; Mike McCarty – Ramona Unified Schools; Laura Hunter –

Environmental Health Coalition; Peter Kozelka – US EPA; Brenda McKoy – Rainbow.

**Item 2** – Public Forum

Laura Hunter, Environmental Health Coalition, introduced herself to the Board and explained the purpose of the Environmental Health Coalition.

Bruce Reznik, San Diego BayKeeper, also introduced himself to the Board and told them about some issues the San Diego BayKeeper had been involved in.

**Item 3** – Minutes of Board Meeting of November 10, 2004

*This record of the minutes of the meeting on this date is not intended for the official record of events and is solely for administrative convenience. A more detailed account of the proceedings is available upon request, consisting of a tape recording and a court reporter transcribed record. Please contact the Regional Board office for assistance.*

Mr. Wright moved approval of the November 10, 2004 minutes. The motion was seconded by Ms. Ritschel and approved by unanimous vote.

**Item 4** – Chairman's, Board Member's, State Board Liaison's and Executive Officer's (EO) Reports.

Chairman Minan announced that the 4<sup>th</sup> District Court of Appeal upheld the Regional Board's MS4 Permit that was appealed by the Building Industry Authority and gave updates on the International Boundary and Water Commission lawsuit.

Chairman Minan explained to the new Board Members that there would be an election for Chairman for 2005 at the next meeting, which would be the first meeting of the new year.

Chairman Minan presented staff members Art Coe and Stacey Baczkowski with Leadership Training Certificates for completing leadership training courses.

Mr. Wright talked about the final stakeholder meeting he attended on the Tijuana River Watershed Bi-national Vision Project. He noted that Pete Silva was part of the panel discussion.

Mr. Wright said he witnessed a car washing demonstration put on by the County of San Diego that recaptured the water. Thirty cars at a time could be washed before having to take away the used water. He congratulated the County on the efforts.

Mr. Art Coe referred to the Status Report on Shelter Island Yacht Basin Total Maximum Daily Load for Dissolved Copper in the Executive Officer's Report and said the item would be before the Board at the February meeting. He noted that a copy of the transcript from the December 10, 2003 public hearing would be sent to each Board Member two weeks prior to the distribution of the February meeting agenda.

Chairman Minan talked about the Statewide Policy for the Implementation of the Storm Water Program and the Status Report on Shelter Island Yacht Basin Total Maximum Daily Load for Dissolved Copper.

Mr. Anderson asked for an update on the Agricultural Water Quality Grant Program. Senior staff member David Gibson said that the San Diego Regional Board received two proposals, one from the Avocado Commission and one from the UC Extension.

*Consent Items 5 and 6*

**Item 5** – Update of Waste Discharge Requirements: Waste Discharge Requirements for DS Waters of America, LP, Lakeside Bottling Plant, San Diego County (tentative Order No. R9-2004-0389) (*Tony Felix*) *The tentative Order updates Order No. 93-33, originally issued to Sparkletts Drinking Water Corporation on March 15, 1993.*

**Item 6** – NPDES Permit Revision: South Orange County Wastewater Authority, Irvine Ranch Desalter Project, Orange County (tentative Addendum No. 3 to Order No. 2001-08, NPDES No. CA0107611) (*David Hanson*)

An amended errata for Item 6 was given to the Board.

Mr. Wright moved approval of Consent Items 5 and 6 with the amended errata. The motion was seconded by Ms. Ritschel and approved by unanimous vote.

**Item 7** – PUBLIC HEARING: Rainbow Creek Total Maximum Daily Loads (TMDLs) for Nitrogen and Phosphorus. A hearing will be held to receive testimony on the Draft Basin Plan Amendment and Technical Report for Total Nitrogen and Total Phosphorus Total Maximum Daily Loads for Rainbow Creek (tentative Order No. R9-2004-0401) (*Alan Monji/Benjamin Tobler*)

Assistant Executive Officer Art Coe explained the hearing procedures and the purpose of the hearing. Staff members Alan Monji and Benjamin Tobler gave the presentation. Senior staff member Craig Carlisle made closing remarks.

Board Members asked questions of Mr. Carlisle.

Other speakers included:

Peter Kozelka, U.S. EPA Region 9

Jesse Westrup, Hines Horticulture

Kristin Hukari, San Diego Farm Bureau

Guy Witney, California Avocado Commission

Mark Thompson, TRS Consultants

Richard Watson, Richard Watson & Associates

Brenda McKoy, property owner

JoAnn Weber, County of San Diego

Bruce Reznik, San Diego BayKeeper

*The meeting was recessed for lunch and Executive Session at 12:23 p.m.*

**Item 10** – *Executive Session* - Discussion of Ongoing Litigation

The Regional Board may meet in closed session to discuss ongoing litigation for the following cases:

*People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Robert Ortega, an individual in his capacity as Acting Commissioner of the International Boundary and Water Commission, United States Section, et al.. United States District Court, Southern District of California, Case No. 01-CV-027BTM(JFS); violation of effluent limits in waste discharge requirements for the International Wastewater Treatment Plant contained in Order No. 96-50 (NPDES No. CA0108928) and of Cease and Desist Order No. 96-52; Referral Order No. 99-61 (David Hanson); and the related “Surfrider” case:*

*Surfrider Foundation, San Diego Chapter v. Robert Ortega, et al.*, Case No. 99-CV-2441-BTM(JFS) (David Hanson)

*People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. City of San Diego*, U.S. District Court, Southern District of California, Case No. 03CV1381-B(POR) (David Hanson); and the related case:

*San Diego BayKeeper and Surfrider Foundation, San Diego Chapter v. City of San Diego*; U.S. District Court, Southern District of California; Case No. 01-CV-0550-B (POR) (David Hanson)

*WILLIAM P. JOHNSON, an individual; and VAIL LAKE USA, LLC, a California limited liability company v. REGIONAL WATER QUALITY CONTROL BOARD – SAN DIEGO, a State of California board and DOES 1-50*. Superior Court of the State of California for the County of San Diego, Case No. GIC815227; Petition for Writ of Mandate and Complaint for Damages in regards to Administrative Civil Liability Order No. R9-2002-0027 for violations of the statewide Construction Storm Water Permit, Order No. 99-08-DWQ. (Frank Melbourn)

*Building Industry Association of San Diego County, et al. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego*; In the Court of Appeal of the State of California, Case No. GIC 780263 (Phil Hammer)

*Fallbrook Public Utilities District v. State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region*, Case No. GIC 819771 (referred to as “MMP case”); Petition for Writ of Mandate challenging administrative assessment of civil liability based on mandatory minimum penalties for violation of effluent limits in NPDES waste discharge requirements. (Frank Melbourn)

*Fallbrook Public Utilities District v. State Water Resources Control Board, et al.*, San Diego County Superior Court Case No. GIC822179 (referred to as “Permit Modification case”); Regional Board failure to act on a request by Fallbrook PUD to amend certain permit conditions contained in NPDES waste discharge requirements. (Victor Vasquez)

*Divers' Environmental Conservation Organization v. State Water Resources Control Board*, San Diego Superior Court, Case No. GIC819689. Petition for Writ of Mandate challenging waste discharge requirements for U.S. Navy, Naval Station San Diego based on absence of numeric effluent limits for toxic pollutants in discharges of storm water. (Paul Richter)

*Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region*. San Diego Superior Court, Case No. GIC 822750. Verified Petition for Writ of Mandate for Breach of Contract.

*Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region*. San Diego Superior Court, Case No. GIC 824706. Verified Petition for Writ of Mandate for Breach of Contract.

*Schutte & Koerting, Inc. and Ametek, Inc. v. California State Water Resources Control Board and Regional Water Quality Control Board, San Diego Region*. San Diego Superior Court, Case No. GIC 824707. Complaint for Breach of Contract, Specific Performance, Intentional Misrepresentation, Bad Faith Denial of Existence of Contract, Compensatory Damages, Exemplary Damages and for Declaratory Judgment, Request for Jury Trial.

The Executive Session was held and all the items listed were discussed.

**Item 12** – *Executive Session* - Consideration of Initiation of Litigation

The Regional Board may meet in closed session to consider initiating criminal prosecution against persons who are alleged to have violated the Porter-Cologne Water Quality Control or the federal Clean Water Act.

The Executive Session was held.

*The meeting reconvened at 1:15 p.m.*

**Item 7** (continued)

Board Member Anderson disclosed that Hines Nursery was a customer of his family business and that he was a member of the Farm Bureau but felt he could use independent judgment in his decision making. Mr. Richards concurred with Mr. Anderson and said he was not precluded from participating.

Mr. Carlisle made closing comments.

Mr. Coe recommended closing the hearing and the public comment period to allow staff to prepare their response to comments, make changes to the draft Basin Plan Amendment and bring the item back to the Board for action in February 2005.

Board Members expressed their concern about closing the public comment period due to public testimony stating the residents in the area did have enough time to comment. Chairman Minan suggested keeping the written public comment period open for an additional two weeks.

Ms. Ritschel asked that staff notify the public about the additional comment period.

Mr. Coe suggested keeping the written public comment period open for an additional three weeks to allow staff enough time to notify the public of the additional time to comment.

Mr. Wright made a motion to close the public hearing and keep the public written comment period open for three weeks. The motion was seconded by Mr. Barrett and approved by unanimous vote.

**Item 8** – Waste Discharge Requirements: Ramona Unified School District, Hanson Elementary School, San Diego County (tentative Order No. R9-2004-0409) (*Bryan Ott*)

Board Member Johnson recused himself from the proceeding due to the Ramona Unified School District being a client of his.

*Board Member Wright left the meeting at 2:05 p.m.*

Mr. Coe introduced the item and staff member Bryan Ott gave the presentation.

Other speakers included:

John Lemmo, Foley & Lardner

Barbara Bradley, Advanced Onsite Systems

Chuck Apgar, Ramona resident

Russell Popma, Ramona resident

Mr. Ott made closing comments and addressed some public concerns.

Mr. Lemmo, Mr. Mike McCarty (*Ramona Unified Schools*) and Ms. Bradley answered questions asked by the Board and addressed some public concerns on system odors and noise.

A motion was made by Ms. Ritschel to approve Order No. R9-2004-0409. The motion was seconded by Ms. Keller and approved by unanimous vote. *Mr. Wright and Mr. Johnson were not present during the item.*

**Item 9** – Report on Clean Water Act Section 401—Water Quality Certification: Report on the Regional Board’s responsibilities under, and implementation of, the 401 Certification program. The program is primarily used to regulate discharges to waters of the United States, including unvegetated streams, riparian areas, and wetlands. (*Stacey Baczkowski*)

Mr. Coe introduced the item and senior staff member Stacey Baczkowski gave the presentation. Staff member Megan Quigley talked about the 401 Mitigation Study. Staff member Mr. Jeremy Haas talked about related programs.

**Item 11** – *Executive Session* - Discussion of Pending Litigation  
The Regional Board may meet in closed session to discuss pending litigation:

The Executive Session was not held.

**Item 13** – *Executive Session* - Personnel  
The Regional Board may meet in closed session to consider personnel matters involving exempt employees [Authorized under Government Code Section 11126(a)]

The Executive Session was not held.

**Item 14** - Arrangements for Next Meeting and Adjournment  
Wednesday, February 9, 2005 - 9:00 a.m.  
Water Quality Control Board  
Regional Board Meeting Room  
9174 Sky Park Court  
San Diego, California



With there being no further business, the meeting was adjourned at 3:30 p.m.

These minutes were prepared by:

Assistant Executive Officer:

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Lori Costa  
Executive Assistant

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Arthur L. Coe